

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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C.A. NO. 00-1051

THE ESTATE OF YARON UNGAR,
ET AL

VS.

JULY 15, 2002
2:00 P.M.

THE PALESTINIAN AUTHORITY,
ET AL

* * * * *

PROVIDENCE, RI

BEFORE MAGISTRATE JUDGE DAVID L. MARTIN

(Plaintiffs' Motion to Enter Default Judgment)

APPEARANCES:

FOR THE PLAINTIFFS:

DAVID J. STRACHMAN, ESQ.
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 ORIGINAL

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KAREN M. ZINNI, RPR-RMR-CRR

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I N D E X

PLAINTIFF WITNESS

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Direct Examination by Mr. Strachman

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E X H I B I T S
FOR ID

PLAINTIFF

IN FULL

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1 15 JULY 2002 -- AFTERNOON SESSION

2 THE COURT: This is the matter of the Estate of
3 Yaron Ungar, et al, versus The Palestinian Authority,
4 et al, Civil Action Number 00-105L. This is a
5 continuation of a hearing on the Plaintiffs' motion to
6 enter default judgment against Defendants HAMAS and
7 HAMAS operatives.

8 Mr. Strachman, will you state your full name,
9 please.

10 MR. STRACHMAN: David Strachman for the
11 Plaintiffs.

12 THE COURT: Are you ready to proceed?

13 MR. STRACHMAN: Yes, your Honor.

14 THE COURT: Call your first witness.

15 MR. STRACHMAN: Thank you. Allan Brendan.

16 ALLAN BRENMAN, PLAINTIFF WITNESS, SWORN

17 THE CLERK: Could you please state your name and
18 spell your last name for the record.

19 THE WITNESS: Alan Brenman, B-R-E-N-M-A-N.

20 THE COURT: Is your first name spelled A-L-A-N?

21 THE WITNESS: Double L-A-N.

22 THE COURT: You may proceed, Mr. Strachman.

23 MR. STRACHMAN: Thank you.
24
25

DIRECT EXAMINATION

BY MR. STRACHMAN:

Q. Dr. Brenman, what is your profession?

A. I'm a licensed psychologist.

Q. And where were you educated in that profession?

A. My doctorate and master's are from Harvard University School of Education.

Q. If you're a psychologist, why were you in the School of Education?

A. The School of Education has a Department of Human Development and Psychology where a lot of students who wish to do more clinical -- clinically related work go to school and receive their training there.

Q. And you have a master's degree as well from Harvard?

A. Right.

Q. And in what area of psychology do you --

A. In child psychology.

Q. You're a child psychologist?

A. Yes.

Q. And can you tell us a little bit about your experience and where you've worked.

A. I did my training in the Boston area at the Franciscan Children's Hospital working with children with emotional and behavioral problems. I've done an

1 internship at the Dana Farber Cancer Institute working
2 with children and families of cancer patients and a
3 year at the Kennedy Memorial Hospital doing my clinical
4 internship also working with children with medical,
5 cognitive and emotional problems.

6 After graduation, I did a year of post-doctoral
7 training in the Department of Child and Family
8 Psychiatry at Rhode Island Hospital.

9 Q. Subsequently, you were employed as a psychologist?

10 A. Yes, I'm self-employed in private practice.

11 Q. Were you on the staff of Bradley Hospital?

12 A. I worked part time in the Outpatient Department at
13 Bradley for four years.

14 Q. Is that a child psychiatric hospital?

15 A. Yes, it's a total child hospital.

16 Q. And subsequent to working there, did you -- have
17 you worked in any other -- did you have any other jobs
18 as a psychologist other than your private practice?

19 A. I worked for Roger Williams Hospital running some
20 bereavement groups for the Hope Center for Life
21 Enhancement, running a group for men with prostate
22 cancer; and I work as a clinical consultant currently
23 with the Department of Human Services helping to run a
24 Medicaid program for disabled children.

25 Q. In front of you, do you have a copy of Exhibit

1 Number 15 -- excuse me, 17?

2 A. My resume.

3 Q. You prepared that?

4 A. Yes.

5 MR. STRACHMAN: I'd ask that that be marked as a
6 full exhibit.

7 THE COURT: It may be so marked.

8 MR. STRACHMAN: Thank you.

9 (Plaintiff's Exhibit 17 was admitted as a full
10 exhibit)

11 Q. And could you tell us, Doctor, about your
12 experience in the field of child psychology.

13 A. I began my training in 1986 working with children
14 with emotional and behavioral problems. One of the
15 areas of specialty that I've worked in is the whole
16 area of bereavement, death and grief work starting with
17 the work I did at the Dana Farber Cancer Institute
18 working with children with cancer and their families.

19 Q. Subsequent to that, do you have other experience
20 dealing with children as a child psychologist?

21 A. Well, my practice currently is about 50 to 60
22 percent working with children and adolescents.

23 Q. And have you dealt with people -- I think you told
24 us a little bit about grief and bereavement groups.

25 Have you dealt with children whose family has suffered

1 a trauma or children who have lost a parent?

2 A. That's one of the areas of specialty that I work
3 in. I get referrals from hospitals when there is a
4 parent with cancer or who has recently died; and I will
5 counsel the children, the family through the grief and
6 bereavement period.

7 I've worked with children from abusive homes in
8 helping them and the families deal with the emotional
9 consequences of those behaviors; and most recently I've
10 treated a family who's lost somebody in the September
11 11th attack.

12 Q. And have you dealt with, in your practice that
13 deals with adults, have you dealt with -- have you been
14 involved in the bereavement and grief field?

15 A. All the time, either through working with the
16 families where one of the parents has died from cancer
17 or some other terminal illness through running
18 bereavement groups for adults who have lost a loved one
19 in their families.

20 Q. You told us that you were involved in grief
21 counselling. Could you tell us what that entails, what
22 that means?

23 A. It means that at various points after a loss, I
24 help people to cope with the intense feelings that they
25 experience, natural feelings that they experience as a

1 result of a death or a loss that they experience. Very
2 often for children it's helping them to label their
3 feelings, helping them to express their feelings in
4 different ways, to normalize it, help them to explain
5 the grief process and provide a lot of support during
6 this period which can last up to a couple of years
7 after a death.

8 MR. STRACHMAN: Your Honor, I'd ask that
9 Dr. Brenman be qualified as both a child psychologist
10 and expert in grief counselling.

11 THE COURT: Granted.

12 MR. STRACHMAN: Thank you.

13 Q. Now, Dr. Brenman, did you have an opportunity to
14 meet with Dvir and Yishai Unger?

15 A. Yes, I did.

16 Q. And did you meet with the Dasberg family?

17 A. Yes, I did.

18 Q. And do you speak Hebrew, by the way?

19 A. Yes.

20 Q. Were you able to speak to them in Hebrew directly?

21 A. To the children I spoke directly in Hebrew and to
22 the grandparents in English.

23 Q. And did you speak to -- could you tell us what you
24 learned about how they're doing and how they're
25 functioning, specifically the children.

1 A. Sure. In my conversations with the children, it
2 was more superficial, how are you doing and how was the
3 trip in, a little bit about why they were here. I
4 didn't go into an in-depth assessment of them, but I
5 did with the grandparents. And I was able to observe
6 the interactions between the grandparents and the
7 grandchildren.

8 From what I could gather from the grandparents,
9 overall the children are doing quite well now. They're
10 in school, and they're doing well. They have positive
11 relationships with their grandparents and other members
12 of the family. They've got some friends. Socially
13 they seem to be doing fairly well as well.

14 There were a number of points, though, that I
15 picked up on that I did have some concerns about. For
16 the older boy, Dvir, who is eight years old, one of the
17 things that I observed and that the grandmother also
18 attested to was his overprotectiveness of his younger
19 brother, constantly where is the younger brother, even
20 at home, prefers to play with the younger brother and
21 his friends rather than be with children his own age
22 and older; and this seems to be accepted by everybody.

23 But he's very protective of wanting to play with
24 his younger brother and aware of where he's at, almost
25 to the point of a dependency, which is somewhat odd.

1 You wouldn't expect that from an older brother who
2 typically is off with their own friends and wants very
3 little to do with their younger sibling. That was one
4 thing that I noticed.

5 The other thing that the grandmother talked a
6 little bit about was with Yishai, the younger boy who
7 is seven, beginning to show a temper and some anger,
8 which is new to him. And they're not quite sure where
9 this is coming from, but she's observed that and is
10 aware of that. And Dvir has had some -- the older boy
11 has some aggressive behavior recently in school as well
12 that they're worried about.

13 Q. And why, if at all, is that notable?

14 A. Well, any kind of aggressiveness is notable. You
15 know, an incident of aggression here or there is not
16 unusual; but if it's a pattern of behavior that is
17 sustained and continues, we would want to look at it
18 and explore it further to see where it's coming from,
19 what the source is. We would need ongoing monitoring
20 supervision.

21 Q. And how did they -- did you discuss with the
22 parents or with the children -- excuse me, the
23 Dasbergs, the grandparents, how the children are
24 reacting to their parents' death?

25 A. Yes. We went back -- I wanted to learn a little

1 bit about what happened right at the time of the
2 murders, and --

3 Q. What did you learn about that?

4 A. That overall there was somewhat of an emotional
5 reaction that would have been expected. I mean, these
6 children were 9 months and about 20 months old, and we
7 would expect there to be an emotional reaction. At
8 this age, if you think about it, children, all they
9 know is their parents. Even at 9 months old, babies
10 react more to their parents visually than they do to
11 anybody else, even from birth. They know their parents
12 best of all.

13 And after 9 months old, that's where they feel
14 their security. They reach to their parents, they want
15 their parents and certainly at 20 months old the
16 relationship only deepens. And during this time there
17 are some psychological events that we see, stranger
18 anxieties and separation anxieties, that are normal for
19 all children to go through; but this was the time where
20 their parents were killed and they were separated
21 forever from their parents.

22 There was some crying and distress from the
23 baby, to some extent hard to console for the
24 nine-month-old, for Yishai. It's hard to say exactly
25 what the separation did for these children; but we do

1 know that, even thinking about it, the two people in
2 their lives to provide them with safety and security
3 were taken away. Children don't have the language to
4 express what that's like, but all we know is that that
5 is a trauma. That's a psychic trauma for these
6 children that they have endured and they live with.

7 For the 20-month-old as well it is -- there was
8 a larger connection, a deeper connection with his
9 parents; and how he understands why they're not there
10 is difficult to say and may take time, certainly in the
11 future, to figure out how they're sort of incorporating
12 this event.

13 The other thing that happened was that the older
14 boy, Dvir, became -- at that point, that's when he
15 became very attached to his younger brother, wanted him
16 around, and that didn't surprise me at all. This is
17 what he knew of his nuclear family. That's all that
18 was left of the four of them. So it makes sense to me
19 that even at that young age, he would want something
20 that is familiar and comforting to him around him.

21 Q. Did you learn anything else about the period
22 subsequent to -- immediately following their parents'
23 death?

24 A. Overall it sounds like the children have done quite
25 well in attaching to their grandparents. These are

1 people that they knew, so it wasn't totally foreign.
2 One thing that I did note in talking to the grandmother
3 was how she coped because if she became -- she became
4 the surrogate parent, so to speak. She took an
5 attitude of there will be no sadness, I will not deal
6 with sadness, I will take this event and I will
7 transform it into something positive, a way to keep her
8 daughter's memory alive; and she said her family
9 adopted the same attitude.

10 And we have to commend them for taking on this
11 challenge and this task of raising these children, and
12 in the short term that's a wonderful way to cope. She
13 got through that, she was able to provide these boys --
14 she wanted to provide the best life for them that she
15 could.

16 On the other hand, I have some serious concerns
17 about that. There has to be sadness. There has to be
18 room for these boys to feel sad that their parents have
19 died and are not there. And in the long term, that
20 could cause some kind of problems in the future for
21 them. If sadness isn't tolerated, if sadness is not
22 allowed, if they're not shown how to handle sadness,
23 that certainly could be a source of problems in the
24 future.

25 Q. What do these children face in the near term?

1 They're now eight and seven. What do they face in sort
2 of the next period of life?

3 A. Well, at each developmental stage, they will have
4 to almost be -- have to deal with their parents' death
5 all over again. As their brains develop and
6 cognitively become more complex and their ability to
7 understand things in a more abstract way and at a
8 deeper level, they will take in this information over
9 and over again.

10 So even now they are asking more questions than
11 they did two years ago or four years ago, and that will
12 continue. At each stage, they will ask questions and
13 be able to understand it more and more and in more
14 depth.

15 Q. What did you learn, if anything, about the
16 questions that they're asking?

17 A. They don't ask a lot. They ask, though, about the
18 information, what happened. They want to know that
19 they've been given -- more recently, Yishai, the
20 younger boy, asked, Is there anything else that I don't
21 know about? You know, Have you told me everything?
22 Which raises -- to me it means, you know, can I trust
23 that you're really providing me with all the
24 information.

25 And, again, at seven years old, he's only

1 capable of handling a certain amount of information.
2 It raises questions for them now and I think in the
3 future about their religious convictions. How could --
4 if you believe in a God that is all powerful, how could
5 God allow this to happen to them? They're already
6 asking that kind of question. And certainly as they
7 develop their own sense of identity, their own sense of
8 a religious identity, it would not be unreasonable for
9 them to think that -- that's going to be questioned as
10 a result of this act.

11 Q. You discussed the grandparents and this sort of
12 mechanism or method that they have to deal with this
13 loss, the lack of grieving. Does that impact the
14 children right now? Is that causing an impact on the
15 children?

16 A. Not necessarily right now; but, you know, looking
17 down in the future, these children will have to mourn
18 the death of their parents in order to sort of -- they
19 are being brought up -- also, it's important to
20 remember the context that these children are being
21 brought up in.

22 Their parents, as the mother said, they're sort
23 of all around. There are pictures of them around.
24 They've published the books from the mother's drawings,
25 from the comic strips. They're very involved in the

1 works of this mother. So it's not like these parents
2 are sort of not discussed and not talked about. So the
3 issue that their parents have died is constantly there
4 for them. They are growing up with that.

5 And it's also important to remember that, as
6 opposed to when children are older and they have
7 memories of a parent, these children were too young to
8 have any memories from their parents. Any information
9 they have is what's being provided to them by their
10 families, by the grandparents. That's very different
11 because there's almost like an absence or an emptiness
12 as a result of their parents' death.

13 Q. Do they, in fact, have any memories of their
14 parents? I mean, at age 9 months and 20 or 22 months,
15 do they form any memories of their parents?

16 A. No, not at that point. It's more of a sensory
17 piece. They certainly would know their mother's and
18 their father's smell, their father's feel, et cetera;
19 but memories of events, no. The brain isn't developed
20 enough at that age to encode that kind of information.

21 Q. So they, then, would grow up not having any
22 memories of their parents?

23 A. Right, which makes it more difficult to mourn and
24 grieve. When I work with kids who have lost a parent,
25 I create a memory book with them. They bring in

1 pictures. We tell stories. I audio tape them. I
2 write things down for them to create a document that is
3 theirs of their memories. This helps with the
4 bereavement. This helps them to connect with the
5 person who is gone; and it helps, again, the process of
6 grieving.

7 These children don't have that. Anything that
8 they have is from other people's memories. What
9 children do then is create in their minds almost a
10 fantasy of this person who has died, their relationship
11 with this person who has died; and this is something
12 that lasts throughout life because there's an emptiness
13 there that has to be filled, and they can fill it, and
14 there are any number of ways that they can fill it.

15 It's not uncommon for people to make a martyr
16 out of the parent who has died. These happen to be
17 wonderful people, but their children can even make that
18 into something larger than life.

19 Q. Why is that a problem?

20 A. Well, it can be a problem because you can never
21 measure up to it. We are constantly aware of our
22 parents' approval of us, want our parents' approval,
23 want our parents to be proud of us. That is a very
24 natural tendency for people, even grown adults, to want
25 their parents to be pleased with them, to want that

1 approval.

2 When you have a parent who is larger than life,
3 it's almost as if you can never fill that void, you can
4 never be good enough, and that's a lot of pressure to
5 grow up in. They know their mother was a very talented
6 artist, their father was a learned man, a wonderful
7 teacher. They could develop very high expectations of
8 themselves based on what they know of their parents.
9 And, again, growing up with this kind of pressure can
10 be very, very difficult.

11 Q. How is that different if their parents, you know,
12 survived but were very talented? In other words, they
13 grew up in their household. Their father was going to
14 be a teacher and rabbi and their mother an illustrator,
15 a well-known sort of personality.

16 A. Because they would have a relationship with that
17 person who would be able to guide them, to talk with
18 them, to demystify things. Somebody could say, you
19 know, it looks like this, but this is the reality of
20 the situation, and also just to help them out.

21 In the absence of that, kids have magical
22 thinking. They think differently than adults, and they
23 can grow up with these fantasies that can last a
24 lifetime; and that's where it can be very, very
25 difficult for them as they grow up.

1 Q. Is there evidence of that now?

2 A. The only evidence that the grandmother talked about
3 was the similarities between the boys and their
4 parents; that the older boy very much is like his
5 father, more studious, more serious in book learning
6 and the younger one is more of a freer spirit and
7 artistic type. I don't know if the parents -- if the
8 grandparents are sort of pegging them to some extent,
9 that you're like your father, you're like your mother,
10 which also can provide comparisons that could be
11 unrealistic for the boys. That's all that I noticed in
12 seeing them.

13 Q. When you discussed the role of the grandparents or
14 the grandparents' sort of method of reacting to the
15 death, are there things they could do to sort of
16 improve things for the children? In other words, are
17 they part of the problem for these kids in terms of
18 growing up, or are they a plus for the children?

19 A. They're a net plus. They think, again, given the
20 situation, they are doing, number one, the best job
21 that they can and a fine job at bringing these boys up.
22 They have to also deal with their own reactions and
23 grief to this; and any way that helps them to survive
24 it and move on to provide a nurturing home for these
25 boys, you know, can't be really criticized.

1 That doesn't mean there's not room for
2 improvement. Nothing's perfect. Nobody's perfect. So
3 I think they're trying the best they can, but there are
4 certain things that are inevitable in this situation.
5 The fact that these boys will have to mourn their
6 parents, the fact that they have been brought up
7 without a relationship with their parents, the fact
8 that they may long their whole lives to fill this
9 emptiness is inevitable. That can't be filled by
10 anybody.

11 Q. And how is that feeling, how is that going to be
12 manifest, say, in -- when they become adolescents or
13 young adults?

14 A. Well, adolescence is an interesting time of life
15 where you're really developing your sense of self, who
16 you are, your identity, where you come from, what do
17 you believe in, who am I, and it's very much related to
18 your parents, where you're coming from; and although
19 they have grandparents, these are still grandparents
20 raising children.

21 It's not the same as parents, and even the
22 grandmother noted she's spoiling them. She's different
23 in how she's raising them than she is with her own
24 children that she raised.

25 Q. How is that a problem or how does that affect the

1 kids?

2 A. Well, they're not as tight with them. They may not
3 allow them to sort of suffer a little bit. We all --
4 you know, I have kids. You know, you can't say yes all
5 the time. You have to be able to say no and teach the
6 kid to be able to tolerate that. If the children
7 aren't given a lot of chances to tolerate any painful
8 experiences, then they do grow up in a different way,
9 having expectations, being less self-sufficient, not
10 working as hard.

11 So there could be ramifications in the future as
12 a result of that, and some of this is going to come out
13 during adolescence where they're really going to be
14 beginning to rebel from their homes and trying to
15 become independent. And that's where I see potential
16 for some of the psychological problems, anxieties of
17 going out on their own, becoming independent, where
18 they have been somewhat protected, anxieties of, well,
19 how do I enter into the world when this happened to my
20 parents. You know, that's potential that could happen
21 to me, too.

22 So issues of anxiety are very large here, fear
23 of other deaths, you know, the fear that if it happened
24 once already, and again they're growing up with death
25 all around them in a sense. These parents are ever

1 present in a way. So the fear of losing other people
2 in their life. They are more susceptible and
3 vulnerable to issues of these fears, fears of death,
4 fear of separation from people. So adolescence
5 potentially is a very difficult time for them.

6 Q. What about after adolescence, once they're sort of
7 young adults?

8 A. Again, in the literature, and even in the people
9 that I've treated, difficulties that they experience
10 are really one of forming other relationships, issues
11 of trust, being able to become close with somebody
12 without the fear of them having -- leaving you or
13 abandoning you. That's a fairly common and big issue
14 for young people with an early loss. Again, they're
15 very susceptible to these feelings of fear of somebody
16 leaving them.

17 Q. And do these feelings and this anxiety that you
18 mentioned, do these kinds of feelings and issues
19 dissipate over time, or will they remain with these
20 children for the rest of their lives?

21 A. It's hard to exactly say now what will happen. I
22 believe that they will have to deal with all of these
23 issues at some point in their lifetime. The magnitude
24 and the intensity is very hard to say. The fact that
25 they will have to struggle with these issues to me is a

1 given. That's just part of who they are, part of how
2 they've developed as a result of their parents' being
3 murdered at such a young age and this loss in their
4 life. That they will have to do.

5 They will have to, again, go through a mourning
6 period at different parts in their life. It is not
7 uncommon at each milestone in a person's life, when
8 they finish high school, when they start a university,
9 when they graduate, when they get married, it brings up
10 losses. It's bittersweet. It's great that these
11 things are happening, but it would have been nice had
12 my parents been there. What would my parents have been
13 like? What advice would my parents give me in these
14 circumstances? And they won't have that. So that at
15 each point they will have to suffer the loss all over
16 again.

17 Q. What will the loss -- ultimately the loss of their
18 grandparents, you know, who are raising them, how will
19 that impact them?

20 A. I would think pretty significantly because it
21 catapults them into being orphaned a second time by the
22 people who basically raised them, at a much younger
23 age; that they're being raised by a generation older
24 than their parents, and they will die sooner. That's a
25 given. And, again, any loss -- previous losses sort of

1 are compounded by the earlier ones.

2 So that potentially could be an incredibly
3 difficult time for them, you know, feelings of being
4 alone in the world. You know, this is all they had,
5 and now they're gone; and chances are these boys are
6 going to be quite young when that happens. A lot of
7 this, again, left untreated or at its worst can be some
8 serious depression where there's a sense of
9 hopelessness and loneliness and sadness. At the
10 extreme end is suicide, which happens, but, you know,
11 that is an extreme, to anxiety disorders,
12 post-traumatic stress disorder.

13 It is not inconceivable that at some point in
14 their lives they will hear about these murders from the
15 outside, not necessarily from their families. They can
16 read about it. Pictures are available. In order -- it
17 is possible that kids become traumatized again even
18 hearing about the information in the future. You don't
19 have to be at the event to suffer a stress disorder.
20 So they are susceptible to that in the future as well
21 just by gathering information about what happened; and,
22 again, during adolescence, young adulthood, that's when
23 people think about, Well, where did I come from? Who
24 were these people? And their own investigations about
25 what happened could lead to them being traumatized all

1 over again.

2 Q. I just wanted to go back for one second. The
3 actual trauma or potential trauma of actually being in
4 that car for Yishai, is there any evidence that he
5 suffered any particularized trauma that sort of affects
6 him?

7 A. There's no outward evidence. A lot of this is
8 invisible, you know, and it also depends on the way you
9 understand child development. If you think about this
10 child having heard the gunshots, crying, startle
11 response, which most likely happened, crying as a
12 result without their primary caretaker responding, on a
13 sensory level, that's a trauma. How long he was in the
14 car before somebody found them is unknown. It might
15 have been hours and hours.

16 Then the, again, ripping away the parents, who
17 are the main source of safety and security for these
18 children, even at nine months old is a trauma. How
19 that encodes in the brain, we don't exactly know; but
20 the fact that it was a trauma to him, that he
21 experienced that is true, making him susceptible and
22 vulnerable to some psychological problems in the
23 future.

24 Q. And is that, then, basically your conclusion as to
25 how this loss affects these children? In other words,

1 you've told us that they seem to be doing pretty good
2 now, pretty well?

3 A. Yes.

4 Q. And they are subject to some issues in terms of
5 their behavior but nothing that is clinical or has --

6 A. Right.

7 Q. -- immediate ramifications?

8 A. Exactly.

9 Q. Or immediate implications; is that right?

10 A. Right.

11 Q. Is what, then, you're telling us that these
12 children are at risk for these kinds of sufferings down
13 the road?

14 A. Absolutely.

15 Q. And can you discuss what that means because I just
16 want to be clear for the Court in terms of we're not --
17 you're not saying, from what I understand, that right
18 now these kids are debilitated. You don't know that
19 they will be debilitated, but you know that they're at
20 risk. What does that mean?

21 A. Right. All I can say now is that they are
22 different than their peers. They are being brought up
23 by their grandparents because their parents were
24 murdered. That's not a typical case scenario, and
25 their friends are aware of that and the community is

1 aware of that. So they are being brought up somewhat
2 differently than a regular child, an average child.

3 But yes, the ramifications of this are a lot in
4 the future, but they are susceptible to deal with
5 issues of depression and anxiety and post-traumatic
6 stress disorder as a result of this in the future.
7 They will have a lot of issues to sort of work through
8 in their lifetime as a result.

9 Q. Is there any way to know if these issues are going
10 to manifest themselves to the extent that they will
11 need intensive treatment or counselling or suffer any
12 of the sort of particularized types of manifestations
13 that you referenced before?

14 A. There's no way to -- I can't say yes or no. I
15 wouldn't -- you know, again, given these situations, I
16 wouldn't be surprised given the adults that I've
17 treated where there's been a significant loss in the
18 past, I wouldn't be surprised if, yes, at some point in
19 their lifetime they would need some kind of
20 psychotherapy to help them cope with the feelings that
21 come up.

22 It also depends on their personalities.
23 Everybody responds differently, even to these
24 situations where death -- they've grown up, again, with
25 death. Some people respond by it limits them. They

1 sort of become a viewer of life because of that sadness
2 and emptiness. They don't participate as fully because
3 of that depression. Other people become risk-takers,
4 and they almost defy death. You can't get me. And
5 those are the ones jumping out -- the James Dean types
6 who take risks and almost defy it. You can't get me.
7 You got my parents. You're not going to get me. That
8 puts people at certain risks as well.

9 So, again, it's hard to determine exactly how
10 these boys are going to respond in the future, but all
11 I know is they have a huge psychological and emotional
12 battle to deal with in their lifetime as a result.

13 MR. STRACHMAN: Thank you.

14 THE COURT: You may step down, Doctor. Thank
15 you.

16 MR. STRACHMAN: Your Honor, I would just like at
17 this point, if I could, to introduce some remaining
18 exhibits. We have provided to the Court an original
19 and a copy of the notice to the Defendants that we
20 provided on June 25, 2002, of this hearing. I'd like
21 that to be made part of the record that they were
22 particularly notified of this hearing. We also have --

23 THE COURT: We'll do that. Has it been
24 designated?

25 MR. STRACHMAN: Yes, your Honor. That's

1 Number 15.

2 THE COURT: All right. So 15 is full.

3 (Plaintiff's Exhibit 15 was admitted as a full
4 exhibit)

5 MR. STRACHMAN: Thank you. Your Honor, we also
6 had a copy of the book that was written about Dvir by
7 his mother. I would like to mark that as Number 16.

8 THE COURT: It may be marked as a full exhibit.

9 (Plaintiff's Exhibit 16 was admitted as a full
10 exhibit)

11 MR. STRACHMAN: Thank you. And also, your
12 Honor, today we provided to the Court, a copy of which
13 is on your Honor's bench, the original's with your
14 Honor's clerk, several additional exhibits that are
15 really in the form of government documents. I filed
16 those documents in response to your Honor's inquiry to
17 Professor Unger, and I thought it might be helpful to
18 the Court.

19 And those are Items 19 through 24, and those are
20 government references to the murder of Yaron Unger as
21 an American citizen, and they include -- excuse me,
22 those are 20 through 24, and I've outlined the page
23 numbers as well. A couple of the documents are long.
24 Number 19, your Honor, is an FBI document that attests
25 to the activities of the HAMAS in the United States. I

1 would like to add that as well, particularly in
2 reference to your Honor's question before the hearing
3 as to the HAMAS's activities in the United States. So
4 we would move for 19 through 24 to be admitted as full
5 exhibits.

6 THE COURT: They may be so admitted as full
7 exhibits.

8 (Plaintiff's Exhibits 19 through 24 were
9 admitted as full exhibits)

10 MR. STRACHMAN: Thank you. And I had a question
11 for your Honor, if I may, as to your Honor's ruling the
12 other day. Will the Court be issuing an order
13 following the hearing on Mr. Sherman's motion? Shall
14 counsel prepare an order?

15 THE COURT: This is with regard to my ruling
16 denying the PLO or the PA standing in effect to
17 participate in the hearing? Is that what you're
18 referring to?

19 MR. STRACHMAN: Well, I think the ruling was
20 more in terms of the proceeding going forward. I think
21 that -- their objection was to going forward, not
22 really to participating. I just didn't know if your
23 Honor was preparing an order or if you would like me
24 to.

25 THE COURT: I would like you to, Mr. Strachman.

1 MR. STRACHMAN: Thank you.

2 THE COURT: Let me just consult my notes,
3 because I did take notes, so I can refresh my memory as
4 to what that ruling was. According to my notes,
5 Mr. Strachman, I overruled the objection filed by the
6 PA and the PLO to the hearing going forward. So you
7 may reduce that to an order, and I'll sign it.

8 MR. STRACHMAN: Thank you. Lastly, your Honor,
9 if it would be helpful to the Court, I'd like to
10 provide a closing; and we also have a brief summary of
11 damages that I'd like to present to the Court as well
12 in written form.

13 THE COURT: You may do so.

14 MR. STRACHMAN: Your Honor, much of what I would
15 say is contained in our memo, and I don't want to be
16 repetitive, but I think what's crucial in this case at
17 this stage of the proceedings is that we have a very
18 clear statute, a statute that is somewhat unique in the
19 sense that it has not been utilized frequently; but it
20 is crystal clear in the statutory, legislative history,
21 both in the memorandum that we previously filed with
22 this Court and the memorandum that I just filed this
23 afternoon, as to what the intent was.

24 The intent was extremely clear, and that is to
25 provide a tool for Americans to fight terrorists in

1 their own way, and that is through the courts in
2 utilizing explicitly all weapons, quote, "all weapons
3 available to litigants." The quotes and the
4 statements, the sentiments of Congress are included in
5 the very detailed legislative history that is quoted at
6 length in our brief.

7 And this proceeding, I think, has an opportunity
8 for the first time to really implement that to its full
9 extent; and to that extent, Judge, I would ask that the
10 full panoply of relief that we're asking for in this
11 case be granted.

12 First, we start with the proceeding not against
13 the PLO, who helped provide material support,
14 et cetera, to these terrorists, but to the actual
15 triggermen themselves and the organization, the
16 terrorist organization to which they belong. And I
17 think that's crucial; that in such a case, to disallow
18 the full panoply of relief to be granted would somehow
19 send the diametrically opposite result or message that
20 Congress intended.

21 And here we have a statute where Congress went
22 out of its way to create jurisdiction in this Court, to
23 create mechanisms for service, to create an expanded
24 class of Plaintiffs, to even allow treble damages in
25 its own -- in Congress's own analysis of how to provide

1 a punitive type of element for these terrorists. And
2 here we've asked to fully implement that statute such
3 that we're asking for not only economic damages, as the
4 witnesses testified to, lost wages, the lost services
5 to these children, but also to the estate, the family
6 and the heirs, survivors as explicitly mentioned in the
7 statute.

8 While this case is somewhat unique in the sense
9 that it is literally the first case brought under this
10 statute that I think has ever been identified, no one
11 has been able to identify another case that was filed
12 under this statute, what we do have is we have a very
13 clear analogy for measuring damages, for dealing with
14 some of the losses that the Unger family has suffered
15 and that the children particularly will suffer going
16 forward.

17 Those cases are all outlined very clearly --
18 hopefully very clearly in our memorandum, and that is
19 an analogy to the 1996 act which amended the Foreign
20 Sovereign Immunities Act. That act is a little bit
21 different. It sets things up a little bit differently,
22 but courts have clearly said how to measure damages and
23 how to address issues very much just like this case in
24 cases against the sponsors of terrorism.

25 Here we have measures of damages that we're

1 seeking against the actual triggermen and their
2 terrorist organization, HAMAS.

3 We would ask the Court, as we've outlined in our
4 memorandum, to analogize the damages so that the family
5 members who testify and who are seeking compensation in
6 the form of damages would fit within the same sort of
7 general guidelines that were made in those Foreign
8 Sovereign Immunities cases.

9 Each of those cases allow for emancipated --
10 excuse me, involved or many of the cases involved
11 emancipated adults, family members of emancipated
12 adults receiving an award for their pain and suffering.
13 So, too, for minor children, in many cases for children
14 whose fathers were taken captive and ultimately
15 returned to them, unlike the case here. And what's
16 crucial, I think, also to recognize is that the
17 suffering here is, it's sort of awkward to say, but not
18 the generalized suffering that a person would have
19 knowing that a family member died.

20 This isn't a car accident case, and that's why
21 Dr. Freedman isn't an accident reconstructionist. He
22 is a person who testifies as to how this person -- how
23 Yaron Unger was killed, following the police report,
24 following the records of the police who investigated
25 this scene.

1 This gentleman, Mr. Unger, 26, witnessed his
2 wife's death. He faced her while she was dying. He
3 turned facing her, facing the terrorists. He knew his
4 son was in the back seat. Within, as the testimony
5 was, approximately 30 seconds, he would have lost
6 consciousness and died; but his last final seconds were
7 knowing that his wife's -- literally the back of her
8 head was blown off by shots that struck straight
9 through the headrest of her seat, just bypassing, thank
10 God, this little nine-month-old child, not knowing what
11 happened to that child because this car was riddled
12 with 50 bullets.

13 And the horror that he suffered, the horror that
14 his family suffers is somewhat unimaginable. It's not
15 akin to much else, I think, that comes before this
16 Court or certainly before counsel in terms of our
17 practices, in terms of dealing with damages. These
18 children will always know how their parents died. When
19 they get older, as Dr. Brenman said, if they
20 independently look for records, they will know that --
21 they will see these pictures. They will see picture of
22 how their father was killed, and that is an
23 unimaginable horror.

24 So the damages in this case, I think, have to
25 reflect that scenario. The cases that deal with

1 terrorism specifically address those kinds of issues.
2 A loss from terrorism is unlike a car accident case in
3 the sense that it's entirely unexpected. There's
4 entirely no analogy that someone could use or someone
5 could make for dealing with the grief and the
6 suffering.

7 It involves cutting off people who are
8 absolutely innocent, two young people not involved in
9 politics, not carrying weapons, not involved in any
10 movements or politics or anything, just coming back
11 from a colleague's wedding, and to see their family
12 devastated this way is an unimaginable suffering. And
13 as Dr. Brenman said, thankfully the suffering that
14 these children will potentially suffer is in a sense in
15 the form of their vulnerability, their vulnerability to
16 these types of syndromes, this anxiety.

17 Thankfully they landed in a decent spot and have
18 excellent grandparents. There's no denying that, and
19 we're fortunate for that; but they have to carry this
20 with them for the rest of their lives. When their
21 grandparents die and they're in their fifties, when
22 they die 20 or 30 years from now, these children will
23 be, as Dr. Brenman said, in a sense orphaned again.
24 Hopefully they can deal with it in a good fashion.

25 And it's not clear, and I don't want to

1 overstate the case either, we're not saying these kids
2 will absolutely suffer in this way. No one can predict
3 that, and no one knows that, and the kids are doing
4 fairly well now, it's obvious; but to live with this
5 kind of a burden, to live with this risk and this
6 vulnerability demands an in-kind measure of damages.

7 And I would ask the Court to make the analogy
8 between the loss of comfort and society in the Foreign
9 Sovereign Immunities cases to this case.

10 It's particularly crucial, your Honor, to do so
11 here for another reason. In each of those cases, in
12 virtually every single one except, as I'm aware of,
13 except really basically one case, they involve an
14 indirect party, the party that supplied Hizbollah with
15 weapons, the party that trained Hizbollah or even
16 trained HAMAS members.

17 Here the awkward situation is that when Congress
18 created this statute, they gave a measure of punitive
19 damages. The punitive damages are the threefold
20 damages. So the strange thing here is that the
21 measure, the ultimate total of damages in this case may
22 very well be less than the punitive damages awarded in
23 cases against the mere sponsors, the financing parties.

24 And I think that was an unintended consequence
25 by Congress. It clearly can't be that Congress said

1 the triggermen get -- are on the hook for less than the
2 state sponsor because the state sponsor we made an
3 exception, we allow punitive damages to apply; but
4 Yaron Unger had fairly modest means, he was a
5 schoolteacher, and the income -- that even trebled loss
6 of income is a fairly modest sum or relatively modest
7 sum, as it were.

8 So to that extent, I think the Court -- we urge
9 the Court to implement all measures of damages in the
10 broadest fashion, and I think that's particularly
11 intended.

12 I would bring the Court -- in that light, I
13 would bring the Court's attention to specific
14 references that are made in the record and are
15 identified in our brief. I won't belabor the Court
16 with this citation. When this statute was first --
17 when this bill was first drafted in 1990, and it has a
18 little bit of a tortured history, it was enacted in
19 '90, it was repealed by mistake, literally by mistake,
20 and reenacted the next year. The citations and the
21 sources are clarified for the Court in our submission.
22 But the first draft of this bill did not allow suits on
23 behalf of heirs and survivors.

24 The Department of Justice testified at the
25 hearing that, in order to clarify who was on the hook

1 and what the potential remedies for families of
2 terrorists would be, asked Congress to specifically
3 include the word "heirs and survivors." By doing so,
4 they specifically said it would make clear that the
5 families of Americans who are killed can bring suit and
6 can recover in their own right.

7 Congress gladly, to the best of my knowledge,
8 without any objection, made that very simple change.
9 And, in fact, that's how we have the law now. So now
10 the law reads -- Section 233(a) says the estate, heirs
11 and survivors can bring suit. And it could be that
12 that is the remedy for, in a sense, the disparate
13 treatment between the gunmen on the one hand and the
14 sponsors on the other hand; that by allowing a broad
15 range of damages and by using, as Senator Grassley I
16 believe said, quote, "all weapons available to
17 litigants," unquote, there could be some measure of
18 justice obtained in the form of huge judgments that
19 potentially could bankrupt these organizations and
20 bankrupt the parties who are doing these horrible and
21 evil types of deeds. Thank you.

22 THE COURT: Thank you, Mr. Strachman.
23 Mr. Strachman, you are correct that the Court continues
24 to have some concerns about the issue of personal
25 jurisdiction, and my inclination is to schedule a

1 hearing for later in this week where you can be
2 prepared on that single issue and I can also focus my
3 thoughts on it and perhaps ask questions that are not
4 clearly formulated in my mind at the present time but I
5 think after I review your materials will be more
6 clearly formulated. Are you available Friday afternoon
7 at 2:00?

8 MR. STRACHMAN: I will be, sure.

9 THE COURT: All right. I'm going to schedule a
10 hearing in this matter for 2:00 this Friday where I'd
11 like you to be prepared to argue the existence of
12 personal jurisdiction both as to the HAMAS organization
13 and also as to the individual operatives; and the
14 Court, I anticipate, will have some questions in the
15 course of your presentation.

16 I think the total amount of time will not exceed
17 one hour. It may be less than that; but since I
18 concluded that I must make a determination that there
19 is personal jurisdiction in order to reach the monetary
20 issues that you have addressed this afternoon, I deem
21 it helpful to have a hearing on that point, on that
22 issue by itself.

23 MR. STRACHMAN: Could I ask the Court if the
24 Court -- if there's something that I might be able to
25 supplement in terms of the record. For instance, the

1 FBI affidavit we originally filed with the Court 20
2 months -- you know, in our initial motion to enter
3 default judgment discusses the transactions involving
4 HAMAS operatives.

5 The Marzook case, which is cited there, shows
6 how Mr. Marzook was the head of the HAMAS military wing
7 operating freely in the United States. So, too, with
8 Mr. Salah and the One Ford Van case. So, too, with the
9 affidavit of Yahudi Barski who indicates the publishing
10 house was -- the web sites, the other activities of the
11 HAMAS; and I'm just wondering if there's something else
12 I can -- some direction the Court can give me, and I
13 will be happy to supplement our filings or direct sort
14 of my inquiry.

15 THE COURT: I would suggest you simply be
16 familiar with the materials that you've already filed.
17 I'm going to be reviewing them again, Mr. Strachman.
18 If in the course of the hearing we reach a point where
19 you feel that had you been alerted to a particular
20 avenue of inquiry you would have supplemented the
21 record further, I'll give you the opportunity.

22 I won't fault you if on Friday you find that you
23 weren't anticipating a particular avenue of inquiry by
24 the Court and would be able to satisfy the Court's
25 inquiry given additional time. So I appreciate your

1 alerting the Court today saying that you'd be willing
2 to try to prepare further materials for Friday. I
3 don't think that's necessary. I'm suggesting that you
4 just focus your preparation for that hearing on the
5 issue of the existence of personal jurisdiction, what
6 it is in the record that the Court should be looking at
7 to find personal jurisdiction both as to the HAMAS
8 organization and as to the individual operatives.

9 I have looked at those exhibits. I'm going to
10 look at them again. I think if you have focused on
11 them and I focused on them, that we'll have a
12 productive hearing.

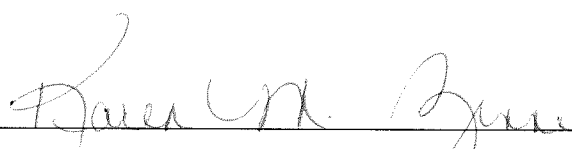
13 MR. STRACHMAN: Thank you, your Honor.

14 THE COURT: Court will stand in recess.

15 (Court adjourned)
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C E R T I F I C A T I O N

I, Karen M. Zinni, RPR-RMR-CRR, do hereby certify that the foregoing pages are a true and accurate transcription of my stenographic notes in the above-entitled case.


Karen M. Zinni, RPR-RMR-CRR


Date

KAREN M. ZINNI, RPR-RMR-CRR